

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2021008265

08/06/2021

HONORABLE MICHAEL W. KEMP

CLERK OF THE COURT
P. McKinley
Deputy

AMERICAN OVERSIGHT

ROOPALI HARDIN DESAI

v.

KAREN FANN, ET AL.

THOMAS J. BASILE

DAVID JEREMY BODNEY
JOHN DOUGLAS WILENCHIK
KORY A LANGHOFER
KEITH BEAUCHAMP
DAVID ANDREW GAONA
CRAIG CARSON HOFFMAN
DENNIS I WILENCHIK
JORDAN C WOLFF

COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE KEMP

MINUTE ENTRY

The Court has reviewed Senate Defendants' Emergency Motion for Stay, Plaintiff American Oversight's ("AO") Response to Senate Defendants' Emergency Motion for Stay, and Senate Defendants' Reply.

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Rule 62(e), Ariz. R. Civ. P., allows the Court to preserve the status quo during the appeal of a preliminary injunction ruling where appropriate to protect the unsuccessful party from irreparable harm that would occur from enforcing the grant of a preliminary injunction. *State ex rel. Corbin v. Tolleson*, 152 Ariz. 376, 378 (App. 1986). Rule 62(e) gives the Court discretionary power and is not mandatory. A judgment other than a money judgement entered against the State of Arizona or one of its agencies or political subdivisions is not automatically stayed upon the filing of an appeal. Ariz. R. Civ. P. 62(e).

As this Court has previously emphasized, the interests of the public at large are indeed substantial given the nature of this legislative action. Auditing voting records of some 2.1 million Maricopa County voters in the 2020 races for President of the United States and United States Senate creates compelling public interest and demands an expedited procedure for disclosure and public scrutiny. This will also provide Senate Defendants an opportunity to challenge the disclosure of documents that Senate Defendants assert are privileged or not otherwise subject to disclosure in Superior Court. The Appellate Court has discretion to stay the proceedings after a denial by the Superior Court. Ariz. R. Civ. App. P. 7(c).

Preserving the status quo will delay disclosure to the public in contravention to Rule 4(c) of the Arizona Special Actions Rules of Procedure and the intent of the Arizona Public Records statutes. The denial of a stay is further supported by the lack of assurances that the records are in fact being preserved by Senate Defendants, Cyber Ninjas, Inc. (“CNI”) and its subvendors, as well as Senate liaison Ken Bennett and any other agent of Senate Defendants contracted to conduct this audit. Although Senate Defendants’ communications regarding preservation of evidence with CNI, subvendors and liaisons may be found to be privileged by this Court, there are no written assurances in the record to support that Senate Defendants gave such directives or that CNI, its subvendors or liaisons agreed to the directives. The Court agrees with Senate Defendants that this is not proof of any wrongdoing. However, given the stakes presented by this case, and the substantial public interest, expedited disclosure of the documents subject to the Arizona Public Records Law is warranted.

The Court finds the interests of AO and the public at large substantially outweigh any potential of imminent harm to Senate Defendants.

The Emergency Motion for Stay is denied.